

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Petition of the Minnesota Public Utilities Commission)	
For Agreement With Changes in Definition of Service)	
Areas for Exchanges Served by CenturyTel, Citizens)	
Telecommunications Company, Frontier Communications)	
Of Minnesota, Mid-State Telephone Company, Scott-Rice)	
Telephone, United Tel Co of Minnesota (UTC of)	
Minnesota), Federated Telephone Company, Melrose)	
Telephone Company, Winsted Telephone Company (TDS)	
Telecom), Eckles Telephone Company (Blue Earth Valley)	
Telephone Company), Lakedale Telephone Company, and)	
Farmers Mutual Telephone Company.)	
)	
)	

**COMMENTS OF THE
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTA),¹ through the undersigned and pursuant to the *Public Notice*² released by the Federal Communications Commission's (FCC's or Commission's) Wireline Competition Bureau (WCB) and pursuant to sections 1.415 and 1.419 of the Commission's rules,³ hereby submits its comments on the Petition of the Minnesota Public Utilities Commission for Agreement With Changes in Definition of Service Areas for Exchanges

¹ USTA is the Nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data and video services over wireline and wireless networks.

² *Public Notice*, CC Docket No. 96-45, DA 03-2641 (rel. Aug. 12, 2003) soliciting comment on the Minnesota Public Utilities Commission's Petition to Redefine Rural Telephone Company Service Areas in the State of Minnesota.

³ 47 C.F.R. §§1.415 and 1.419.

Served by CenturyTel, Citizens Telecommunications Company, Frontier Communications of Minnesota, Mid-State Telephone Company, Scott-Rice Telephone, United Tel Co of Minnesota (UTC of Minnesota), Federated Telephone Company, Melrose Telephone Company, Winsted Telephone Company (TDS Telecom), Eckles Telephone Company (Blue Earth Valley Telephone Company), Lakedale Telephone Company, and Farmers Mutual Telephone Company (Petition) and the accompanying Procedural History.

SUMMARY

The Commission should refrain from taking any substantive action on the Petition, recognizing that the issues addressed in the Petition are currently being considered by the Federal-State Joint Board on Universal Service (Joint Board), pending a recommendation by the Joint Board and a subsequent Order by the Commission in an anticipated rulemaking proceeding associated with such Joint Board recommendation. If the Commission determines that it must substantively address the Petition before such a Joint Board recommendation and Commission Order, the Commission should find that the service areas of the rural telephone companies identified in the Petition may not be redefined. The Minnesota Public Utilities Commission (Minnesota PUC) has provided no basis for the redefinition of the service areas of these rural telephone companies. It inaccurately interprets the only recommendation that the Joint Board has made and the only decision that the Commission has issued on the issue of redefinition of rural telephone companies' service areas, drawing its own conclusion that such service areas can be redefined if certain concerns raised by the Joint Board and the Commission are addressed. Yet, neither the Joint Board nor the Commission has concluded that the service areas of rural telephone companies can be redefined to something other than their study areas. Accordingly, the Commission should not redefine the service areas of the rural telephone companies identified

in the Petition without a revised recommendation from the Joint Board and a revised Commission decision on such recommendation permitting such a redefinition. The Minnesota PUC focuses on the benefits of competition in its explanation of why the wireless carrier, Midwest Wireless, for which redefinition is requested, was granted eligible telecommunications carrier (ETC) status and why redefinition of certain service areas is necessary for this carrier to receive universal service support. The Minnesota PUC has effectively de-linked the requirement that a carrier seeking ETC status must be able to serve the entire service area of a rural telephone company from the process of granting ETC status. Equally important, the Minnesota PUC has substituted the satisfaction of its goals of promoting market entry and competition in place of conducting a true public interest analysis of whether a carrier should be designated as an ETC and thus be eligible to receive universal service support. The Commission should not be distracted from the purpose of universal service support, which, as specified in the Communications Act of 1934, as amended (Act), is to preserve access to basic telephone service, by the goal of competition, which is being pursued at the expense of rural wireline carriers and the universal service fund.

DISCUSSION

The issues addressed in this Petition have significant import for many carriers across the country. Importantly, these issues have already been presented by the Commission for discussion and a recommendation by the Joint Board in the proceeding initiated by the Universal Service Portability Order.⁴ Accordingly, USTA urges the Commission to find that this Petition is a part of that broader proceeding currently before the Joint Board, from which a

⁴ See *Federal-State Joint Board on Universal Service*, Order, CC Docket 96-45, 17 FCC Rcd 22642 (2002) (Universal Service Portability Order).

recommendation will be provided to the Commission, forming the basis for an anticipated Notice of Proposed Rulemaking. More specifically, USTA urges the Commission to determine that no action will be taken on this Petition until the Joint Board issues a recommendation and the Commission issues an Order in the anticipated rulemaking proceeding.

If the Commission proceeds with a substantive consideration of this Petition before the Joint Board issues a recommendation and the Commission issues an Order in the associated rulemaking, the Commission should not accept the proposal of the Minnesota Public Utilities Commission (Minnesota PUC) to redefine the service areas of any of the rural telephone companies identified in the Petition. The Minnesota PUC has provided no basis for such redefinitions. Although the Minnesota PUC appropriately cites to the Act,⁵ and the Commission's Rules⁶ as the authority for how redefinition of service areas for rural telephone companies may be accomplished, the Minnesota PUC inaccurately interprets its ability, even with agreement from the Commission, to redefine such rural service areas pursuant to the only Joint Board recommendation and Commission decision that address redefinition.

The Minnesota PUC recognizes that "[n]either the Federal Act nor the Commission's Universal Service Order articulate specific standards for the states or the Commission to follow

⁵ Section 214(e)(5) of the Act states that "in the case of an area served by a rural telephone company, 'service area' means such company's 'study area' unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company." 47 U.S.C. 214(e)(5).

⁶ The Commission's Rules repeat the language of Section 214(e)(5) of the Act and state that "if a state commission proposes to define a service area served by a rural telephone company to be other than such company's study area, the Commission will consider that proposed definition in accordance with . . . [t]he state commission's ruling or other official statement presenting the state commission's reasons for adopting its proposed definition, including an analysis that takes into account the recommendations of any Federal-State Joint Board convened to provide

in establishing a new service area definition. The Commission's only requirement is to 'take into account' the Joint Board's recommendations."⁷ The Minnesota PUC appropriately looks to the only recommendation the Joint Board has made with regard to redefinition of the service areas of rural telephone companies, but inaccurately extrapolates from the Joint Board's recommendations that redefinition is possible if the concerns of the Joint Board are addressed. The Joint Board has clearly stated its recommendation "that the Commission retain the current study areas of rural telephone companies as the service areas for such companies."⁸ Although the Minnesota PUC acknowledges the recommendation that such services areas will initially remain identical to their study areas, the Minnesota PUC claims that the Joint Board "implied that as circumstances change, so might its Recommendation."⁹ While it may be true that the Joint Board may at some time revise its recommendation,¹⁰ it has not yet done so. More importantly, the Joint Board did not in any way state or infer that pending a revised recommendation, state commissions could redefine the service areas of rural telephone companies by addressing the concerns (*i.e.*, cream skinning, the competitive footing of rural telephone companies compared with other local exchange companies, and the determination that

recommendations with respect to the definition of a service area served by a rural telephone company." 47 C.F.R. §54.207(c)(1)(ii).

⁷ Petition at 4.

⁸ *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, 12 FCC Rcd 87, 179 ¶172 (1996) (Joint Board Recommendation).

⁹ Petition at 4.

¹⁰ In fact, this matter is before the Joint Board now as directed by the Commission in its Order requesting the Joint Board to "review certain of the Commission's rules relating to the high-cost universal service support mechanisms to ensure that the dual goals of preserving universal service and fostering competition continue to be fulfilled." Universal Service Portability Order, ¶1. More specifically, the Commission has asked the Joint Board to provide guidance regarding the manner in which the level of disaggregation of support should be considered when

the costs of providing universal service by a rural telephone company should be based on that company's embedded costs) raised by the Joint Board in its Recommendation.¹¹ The Minnesota PUC attempts to address cream skimming, the regulatory status of rural telephone companies, and administrative burdens that may be associated with disaggregation in an effort to circumvent the directive of the Joint Board and the Commission,¹² but these attempts are not useful because neither the Joint Board nor the Commission provided an option for circumventing their decisions to retain the study areas of rural telephone companies as their service areas.

The Minnesota PUC does not even rely on the appropriate portion of the Commission's Order on universal service where the Commission adopts the Joint Board's recommendation regarding redefinition of the study areas of rural telephone companies. With regard to rural service areas, the Commission states "[w]e agree with the Joint Board that, at this time, retaining the study areas of rural telephone companies as the rural service areas is consistent with section 214(e)(5) and the policy objectives underlying section 254."¹³ Yet, as authority for its proposed redefinition, the Minnesota PUC cites to the portion of the Universal Service Order that incorporates the analysis of the Joint Board "that states designate service areas that are not unreasonably large" and "that service areas should be sufficiently small to ensure accurate targeting of high cost support and to encourage entry by competitors", but this portion of the Universal Service Order refers to the Commission's adoption of the Joint Board

determining whether to certify new eligible telecommunications carriers (*i.e.*, whether a service area should be something other than the rural carrier's entire study area). *Id.* ¶10.

¹¹ See Joint Board Recommendation, ¶¶172-174.

¹² See Petition at 12.

¹³ *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, ¶189 (1997) (Universal Service Order).

recommendations with regard to non-rural service areas, not rural service areas.¹⁴ The Minnesota PUC's reliance on this analysis, which pertains to the redefinition of non-rural service areas, is irrelevant in the matter before the Commission – again, the redefinition of rural service areas.

In addition to inapplicable references to the Universal Service Order and inaccurate extrapolations from the Joint Board Recommendation, the Minnesota PUC cites to the fact that some of the rural telephone companies identified in the Petition, and other companies, have already disaggregated their service areas to the exchange level and sub-exchange level as the basis for its claim that one of the concerns identified in the Joint Board Recommendation – cream skimming – is no longer a concern that should prevent redefinition of service areas served by rural telephone companies. This analysis is flawed. The Minnesota PUC has misconstrued the purpose and effect of disaggregation by rural telephone companies. First, those rural telephone companies that have disaggregated, have done so pursuant to the Rural Task Force Order,¹⁵ in which the Commission agreed with the Rural Task Force that “*support* should be disaggregated and targeted below the study area level”¹⁶ because the “provision of uniform *support* throughout the study area of a rural carrier may create uneconomic incentives for competitive entry and could result in support not being used for the purpose for which it was

¹⁴ See Petition at 3, *citing* Universal Service Order ¶184.

¹⁵ *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, CC Docket Nos. 96-45 and 00-256, 16 FCC Rcd 11244 (2001) (emphasis added) (Rural Task Force Order).

¹⁶ Rural Task Force Order, ¶144.

intended, in contravention of section 254(e).”¹⁷ The Commission concluded that disaggregation and targeting of support would ensure “that the per-line level of support is more closely associated with the cost of providing service.”¹⁸ Second, the Commission did not find that disaggregating a rural telephone company’s study area for the purpose of targeting universal service support also required an associated redefinition of a rural telephone company’s service area for granting an ETC designation, thereby limiting the area an ETC must serve in order to receive universal service support. In fact, disaggregation facilitates the ability of competitors to serve the entire service area (*i.e.*, the study area), which promotes competition throughout the entire rural service area, not just the most lucrative portion of that service area. It is clear that the Commission still expects a competitive ETC to serve a rural telephone company’s study area, which is its service area, regardless of whether the provision of universal service support is disaggregated below the study areas level. The Commission’s use of language like “once a competitive eligible telecommunications carrier is designated in a rural study area” and “prior to the certification of a competitive eligible telecommunications carrier in a study area” in its Rural Task Force Order makes that expectation clear.¹⁹ Therefore, even if the Joint Board and Commission had provided that the directive against redefining a rural telephone company’s service area could be overcome by addressing the concerns they raised as a basis for retaining a rural telephone company’s study area as its service area, the Minnesota PUC has not overcome

¹⁷ *Id.*, ¶145 (emphasis added). In addition, the Commission explains that “[b]ecause support is averaged across all lines served by a carrier within its study area under the existing mechanism, the per-line support available throughout the study area is the same even though the costs throughout the study area may vary widely. As a result, artificial barriers to competitive entry in the highest-cost areas and artificial entry incentives in relatively low-cost portions of a rural carrier’s study area are created.” *Id.*

¹⁸ *Id.*

¹⁹ Rural Task Force Order, ¶159.

the concern of cream skimming by arguing that some rural telephone companies have disaggregated their service areas.²⁰

The filing of this Petition by the Minnesota PUC is indicative of a problem that is occurring with greater frequency across the country. Attempting to redefine the service area of rural telephone companies after competitive ETC status has been granted by a state commission underscores the inherent problem of de-linking the grant of ETC status from the requirement that the proposed ETC serve the entire service area of the incumbent rural telephone company as required by the Act.²¹ Pursuant to the requirements of the Act, state commissions must require carriers seeking ETC designation in an area served by a rural telephone company to serve the entire service area of such rural telephone company, which as discussed above is the rural telephone company's study area, before they grant such carrier ETC status. The Minnesota PUC argues that the wireless license of Midwest Wireless does not entirely match the service areas of many rural telephone companies in Minnesota and thus necessitates that where the license of Midwest Wireless only encompasses a part of a service area of a rural telephone company, such service area should be redefined so that Midwest Wireless, as a designated ETC, can obtain universal service support for the area covered by its license.²² The Minnesota PUC states that

²⁰ The fact that the Minnesota PUC claims that certain incumbents have disaggregated their own service areas more clearly highlights its misunderstanding of what these incumbents have disaggregated. *See* Petition at 12. These incumbents have not disaggregated their service areas. Rather, they have disaggregated how universal service support will be provided in their study area pursuant to the Commission's findings in the Rural Task Force Order. Such disaggregation did not alter their service areas from being something other than their study areas.

²¹ Sections 214(e)(1) and (2) of the Act require that a State commission may designate a common carrier as an ETC if that carrier meets the requirements of offering the required services supported by Federal universal service support and advertises such services and that a carrier that receives ETC designation shall be eligible to receive universal service support for the service area for which the designation is received. *See* 47 U.S.C. §214(e)(1) and (2).

²² *See* Petition at 6-8.

“[w]ithout a redefinition of the service areas of the 15 rural Minnesota companies covered by this petition, however, the MPUC designation of Midwest Wireless as an ETC pursuant to 47 U.S.C. §214(e)(2) cannot be implemented completely, even though such designation is clearly in the public interest.”²³ Yet, this claim is simply not true. Midwest Wireless can offer and provide service in the entire service areas of the rural telephone companies identified in this Petition so that it can obtain universal service support pursuant to the requirements of the Act. It may not be able to offer wireless service throughout all of the service areas of these rural telephone companies because its wireless license does not cover the entire area of these service areas, but it can certainly offer wireline service either through its own facilities or through a combination of its own facilities and resale of another carrier’s services as specified in Section 214(e)(1)(A) of the Act.²⁴ In fact, the Commission has already effectively addressed the concern raised by Midwest Wireless and the Minnesota PUC in its Universal Service Order. Although the issue raised by some wireless carriers in the Universal Service Order was the “concern that they would not be able to provide service throughout a rural telephone company’s study area because that study area might be noncontiguous,”²⁵ the underlying problem presented there is the same one raised by the Minnesota PUC in its Petition – that a wireless carrier’s wireless license does not encompass the entire service area of the rural telephone company. The Commission addressed this concern in the Universal Service Order, stating a wireless carrier facing this issue “could

²³ See Petition at 8. The issue of redefinition of service areas of the rural telephone companies identified in the Petition is not isolated to the entry of Midwest Wireless into these rural Minnesota study areas. The same issue and others may arise if additional wireless service providers seek redefinition of the same service areas to fit their individual wireless footprints. The Commission must consider the impact that multiple requests for service area redefinitions may have on these rural telephone companies.

²⁴ See 47 U.S.C. §214(e)(1)(A).

²⁵ Universal Service Order, ¶189.

supplement its facilities-based service with service provided via resale.”²⁶ There is no reason why Midwest Wireless cannot serve the entire service area (*i.e.*, the study area) of the rural telephone companies identified in the Petition. When Midwest Wireless’s wireless license does not match the entire service area of a rural telephone company, it may have to serve a portion of the service area with its own wireless facilities and the remaining portion through resale of another carrier’s wireline facilities in order to obtain universal service support for the service area. Interestingly, the Minnesota PUC Petition does not indicate whether or not Midwest Wireless has even explored the possibility or made any effort to offer its services through resale to all of the customers in the affected study areas.

There is much discussion in the Minnesota PUC’s Petition about the goals of federal and state laws being to encourage competition and about the designation of ETCs as being in the public interest because such designations purportedly promote increased competition.²⁷ While one of the goals of the Act is to promote competition, the purpose of Section 254 of the Act, which provides for universal service support, is not to promote competition, but to preserve access to basic telephone service.²⁸ Carriers seek ETC designation because that enables them to receive universal service support. Yet, the Act requires that when designating an additional ETC (*i.e.*, a competitive ETC) in an area served by a rural telephone company, the state commission must find that the designation is in the public interest.²⁹ The Minnesota PUC granted Midwest Wireless ETC status, concluding that such designation was in the “public interest because rural

²⁶ *Id.*

²⁷ *See* Petition 2, 7-8.

²⁸ *See generally* 47 U.S.C. §254(b).

²⁹ *See* 47 U.S.C. §214(e)(2).

customers would stand to benefit from increased competition.”³⁰ Then the Minnesota PUC filed the Petition seeking to disaggregate, or rather redefine, the service areas of many rural telephone companies in Minnesota in an effort to promote wireless entry into the market, increasing competition by using the scarce resources of federal universal service support, but at the expense of rural wireline carriers. However, Congress did not provide universal service support to promote competition and thus the Minnesota PUC’s efforts in its Petition are in conflict with the purpose of Section 254 of the Act. Accordingly, if universal service support is not intended to promote competition then the public interest requirement of granting ETC status, for which the sole purpose is to obtain universal service support, cannot be met by a finding that designating a carrier as an ETC would promote competition.³¹ The Commission should not be steered away from the requirements of the Act with regard to granting ETC designations and thus carriers that can obtain universal service support by the promises of competition. If the Minnesota PUC wants ETCs to receive universal service support because it believes competition would be promoted, the federal universal service fund should not be raided for that purpose. Rather, the Minnesota PUC should provide such support through a state-funded universal service program.

Preserving and advancing the universal service fund to ensure that basic telephone services are provided is of paramount importance. Use of these scarce resources must enable all ETCs to provide qualifying services that are reasonably comparable to those services provided in

³⁰ Petition at 7-8.

³¹ With respect to Midwest Wireless and the Minnesota PUC’s claim that rural customers would benefit from increased competition, it is important to note that customers of the wireless carrier would not receive equal access services, carrier of last resort benefits, or rate regulation protections from Midwest Wireless, all of which they do receive from the rural incumbent telephone companies. In addition, not all customers in a rural telephone company’s study area would benefit from or have access to Midwest Wireless’s services if Midwest Wireless did not serve the entire service area, whether through its own facilities or through resale.

non-high-cost (or non-rural) areas at comparable rates. In order to do this, carriers must be able to build and maintain the necessary critical infrastructure for providing these services. Thus universal service funding must support carriers' networks. Importantly, rural carriers build their networks on a study area basis and thus the Commission should not redefine the service area of the rural telephone companies identified in the Petition to be something other than these companies' study area.

CONCLUSION

The Commission should refrain from taking any substantive action on the Petition, recognizing that the issues addressed in the Petition are currently being considered by the Joint Board, pending a recommendation by the Joint Board and a subsequent Order by the Commission in a rulemaking proceeding associated with such Joint Board recommendation. If the Commission determines that it must substantively address the Petition before such a Joint Board recommendation and Commission Order, the Commission should find that the service areas of the rural telephone companies identified in the Petition may not be redefined as the Minnesota PUC requests because the Joint Board and the Commission have previously determined that the service areas of rural telephone companies may not be redefined to something other than their study areas and these determinations have not been revised.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Meena Joshi, do certify that on August 26, 2003, the afore-mentioned Comments of The United States Telecom Association was electronically mailed to the following parties.

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